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PART V

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA

LEGISLATIVE ASSEMBLY DEPARTMENT

The following Report of the Select Committee on the Bill to impose a special tax on a certain class of income, was presented to the Legislative Assembly on the 19th March, 1947:—

We, the undersigned, members of the Select Committee to which the Bil to impose a special tax on a certain class of income was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

At the outset of our discussions some of us proposed that the Bill should be recast on the lines of the Excess Profits Tax Act, but Government was unable to accept this proposal.

Clause 2 and Schedule 2.—We consider that the flat figure of one lakh of rupees by way of abatement contained in the Bill is not suitable for all classes of business ownership, and we accordingly introduce as sub-clause (1) of clause 2 a definition of abatement, fixing differing criteria of abatement in respect of companies, firms, Hindu undivided families and others, together with a second schedule laying down the basis on which the capital of a company will be computed, where the abatement is expressed as a percentage of capital.

The other changes in this clause are all consequential upon the substantial alteration of the abatement figure mentioned above.

Clause 4 is recast to include therein provision exempting from the tax any bonus or subsidy from the Central Government.

Clause 7.—We add a proviso enabling the Central Board of Revenue to use its discretion to grant relief in certain cases, as has been done in practice in relation to excess profits tax.

Clause 8.—The amendments to sub-clause (1) are consequential upon the abatement provisions applicable to companies which we propose, and to sub-clause (8) we add provision conferring a right of appeal on the principal company against orders of allocation under this sub-clause.

Clause 13.—We think that some interest should be payable on taxation collected in excess under the provisional assessment and make an addition to this clause accordingly.

Clauses 11, 14 and 16.—In these clauses we propose small changes in the periods mentioned.

2. The Bill was printed in the official Gazette on Saturday, March 8th 1947.

3. We think that the Bill has not been so altered as to require republication, and we recommend that it be passed as now amended.

JOGENDRA NATH MANDAL.
LIAQUAT ALI KHAN.
P. J. GRIFFITHS.
GEOFFREY W. TYSON.
MUHAMMAD YAMIN KHAN.
K. NAZIMUDDIN.
MUHAMMAD NAUMAN.
H. A. S. H. I. SETH.
*K. C. NEOGY.
*MANU SUBEDAR.
*D. CHAMAN LAL.
*VADILAL LALLUBHAI.
*MOHAN LAL SAKSENA.
*N. G. RANGA.
*SATYA NARAYAN SINHA.
*M. R. MASANI.
N. M. JOSHI.
SHAVAX A. LAL.
J. SHEEHY.
C. W. AYERS.
*MANGAL SINGH.

NEW DELHI;
The 19th March, 1947.

MINUTES OF DISSENT

I

1. We regret we feel obliged to disagree with the recommendations of the majority, which includes departmental officials.

2. This Bill was referred to Select Committee by the Assembly without debate in order to enable the possibilities of taxing surplus business profits made during the past year) in an equitable manner to be explored. Indeed, in the course of the general budget discussion several members of the Assembly had expressed the view that the proposed Business Profits Tax was objectionable by reason of its being a rough and ready measure of taxation, inequitable in its incidence, and that it was in many respects a more unsatisfactory measure than the Excess Profits Tax. When, therefore, the Finance Member put before the Select Committee a statement (*vide* Annexure) showing that the yield of the E. P. T., even at the lower rate of 33 1/3 per cent. would be substantially higher than the yield of the proposed Business Profits Tax and when a member of the Committee (not being one of the signatories to this minute) suggested

*Subject to a minute of dissent.

that the present measure be remodelled so as to bring it in line with the provisions of the old E. P. T., we readily supported the idea and even agreed to an incidence of 33 1/3 per cent, to dropping all reference to deficiencies and to making other essential adjustments. Three reasons weighed with us in arriving at this view. The first was that a revival of the E. P. T. for one year would eliminate from the present proposal many of its defects and that, since the E. P. T. had been operated for several years and its form was known and understood both by the Department and the bulk of assessees, who would be more readily reconciled to it, it would not have the same adverse psychological effects as the present measure. The second reason was that the burden would fall on the shoulders of those who could bear it best. The third reason was that in this way the Government revenues would get a higher yield than what was expected by the Finance Member from the Business Profits Tax. These arguments, pressed by us in concert with members of other parties, so impressed the Finance Member that at one stage he offered to examine the proposal and to prepare an alternative scheme based on the old E. P. T. with necessary modifications. We were disappointed when later the Finance Member intimated that he had decided to drop the idea and wanted to proceed with the Business Profits Tax in its present form. We would like to record our regret that this alternative, which was at one stage acceptable to all sections of the Select Committee, was later found unacceptable by the Finance Member and that its consideration by the Select Committee was at that stage ruled out of order by the Chair.

3. So far as the present Bill is concerned, we regret we cannot support it in the form in which it emerges from the Select Committee. In order to minimise, if not to obviate, its deleterious effect on existing enterprises and on the investment of capital in new industries, which are matters of vital concern at a time when increased production is India's prime need, we proposed amendments which, we regret, were not accepted by the majority of the Committee.

4. In clause 2 of the Bill, there are two important changes that we proposed and would like to see effected. Both are with regard to the definition of "abatement" in sub-clause (1). Our first proposal is that, in place of 5 per cent. of capital in respect of the large bulk of companies and 6 per cent. in respect of director-controlled companies suggested by the majority of our colleagues, we would like 7½ per cent. to be substituted. We trust it will be appreciated that the sums involved in such abatement of 7½ per cent., as well as the balance of the profits left after the imposition of this tax over the limit of the abatement, would still be liable under the present taxation proposals to the somewhat heavy rate of seven annas in the rupee before any amounts could either be taken to reserve or paid out in dividends. The second change is in regard to the computation of capital which is prescribed in Schedule 2 to this Bill. We regret we cannot agree to the terms of Schedule 2 as proposed by the majority of our colleagues. We would, in its place, substitute the method of computation of capital employed laid down in Schedule 2 of the Excess Profits Tax Act. We regret that, although on this proposal of ours the Committee was evenly divided we were unsuccessful in getting the amendment accepted. We strongly urge that this very necessary change should be made in Schedule 2 to this Bill which would not only make the calculation of capital sounder in principle and fairer to the assessee but also bring it in line with principle which have been hitherto followed by Government themselves for several years. We cannot appreciate the policy which has prompted a departure from these sound principles. We apprehend *inter alia* that if such a departure is made, it

incidence of tax will, in the case of numerous private firms, have little relation to the turnover of the business or the profits usually made, since borrowings form a very important element in the carrying on of business by private firms in this country, and if borrowings are altogether excluded from the computation of capital, the minimum of rupees one lakh would be the only exemption applicable to such firms.

5. In clause 4 of the Bill, our proposal was that the incidence of the tax should be 12½ per cent. of the taxable profits in place of 25 per cent. In making this proposal we have been guided by the consideration that when a new form of taxation is established for the first time in our fiscal history, sound policy dictates that its incidence should not be anything as severe as that proposed by the majority of our colleagues. We would also urge that the effect of the new and uncertain burden of taxation on industry should be estimated not with regard to this proposal alone but in the light of the cumulative effect of this tax along with other taxation measures, such as the Capital Gains Tax the increase in the Corporation Tax and the alteration in the incidence of the Super-tax. Another proposal of ours in connection with this clause of the Bill is that, along with the business of life insurance, general insurance, banking, investment and public utility concerns should be totally exempt from Business Profits Tax under this Bill. Special consideration might also be given to the Indian shipping industry, whose growth is so strongly desired by Indian public opinion.

6. We drew attention to the omission from this Bill of a clause on the lines of Section 26 of the Excess Profits Tax Act which gave power to the Central Board of Revenue to give relief if it was satisfied that, in the case of any particular business, special circumstances existed which rendered it inequitable that the abatement should be computed in accordance with the provisions of that measure. Such special circumstances, which might also arise in the operation of this Bill, would include in particular cases where the capital employed in a business is disproportionately small in relation to the volume of the activities of the business and the risks involved, where heavy expenses have been incurred in connection with experimental or development work, or where the business is of a pioneer nature. We fail to understand how the addition of such section enabling the grant of relief by the Central Board of Revenue at its discretion can possibly be objected to.

7. We know that the modifications suggested by us in Clauses (2) and (4) of the Bill would reduce the yield of this tax, but in our opinion the yield originally estimated by the Finance Member was a gross underestimate. We would also point out that not only was the suggestion for a revival of the E. P. T. at 33 1/3 per cent. which would have yielded more than the sum desired by the Finance Member, turned down by him but that an offer made by one of us to suggest alternative measures by which such shortfall of revenue might be made good was met with a marked disinclination on his part to consider such suggestions. On the issue of arrears of collection of income-tax and super-tax, it was not denied that there were heavy arrears. It was claimed that some of these arrears were included in the estimates. We feel, however, that additional arrears would accrue to Government Revenues in the current budgetary year if efficient and energetic collection were effected.

8. In conclusion, we would like to record our opinion that, even in the modified form in which we are recommending it, the proposed Business Profits Tax tends to conceal the increased incidence of taxation on investors and on businesses in this country and that in the case of every business concern such incidence would, at the lowest, be 7 annas in the rupee and might go up to 8, 9

or 10 annas, or even more, dependent on its capital structure and profits. In no case can there be any justification for the operation of this tax being extended beyond the period of one year for which this measure is devised.

MOHAN LAL SAKSENA.
K. C. NEOGY.
SATYA NARAYAN SINHA.
N. G. RANGA.
M. R. MASANI.
VADILAL LALLUBHAI.
MANU SUBEDAR.
D. CHAMAN LALL.
MANGAL SINGH.

NEW DELHI;
The 19th March 1947.

ANNEXURE TO MINUTE OF DISSENT

Statement supplied by the Finance Department

Case	E. P. T. at 66 2/3 per cent actual	Tax payable if E. P. T. charged: at 50 per cent with Standard of 8 per cent. on capital	Tax payable if E. P. T. charged: at 40 per cent on capital	Tax payable if E. P. T. charged: at 33⅓ per cent Proprietor's	B. P. T. at 25 per cent. on excess over Rs. one lakh
	Rs. Lakhs	Rs. Lakhs	Rs. Lakhs	Rs. Lakhs	Rs. Lakhs
1 . .	167	134	108	90	67
2 . .	99	90	72	60	48
4 . .	181	145	116	97	72
	131	102	82	68	57
5 .	9	7	5½	4⅔	3½
6 .	51	41	33	28	21½
9 . .	39	30	24	20	15½
10 . .	30½	...		...	12½
11	14	...		...	5½
12 . .	18½	...	...	.	7½
15 . .	16⅔	...	..	...	6½
14 . .	6.6	...	...	..	2.7
16 . .	¾	1⅓	1	4/5	¼
17 . .	16	15	12	10	8
18 . .	14		..	...	7½
19 . .	59½	51½	41	34	28
20 . .	72½	...	.		30½
21 . .	3¾	...	...		2

II

I am generally in agreement with the above joint minute of dissent. But the most important consideration that has weighed with me in dissenting from the majority report is the refusal of the Honourable Finance Member to reinstate the E. P. T. with suitable modifications favouring the Government itself in the place of this proposed B. P. T. although the E. P. T. is shown by the figures supplied to us by the Central Board of Revenue, to be much more productive than the B. P. T. when the business community which has to pay these taxes has itself preferred to accept the E. P. T. to the proposed B. P. T. and when the former can yield even more revenue, I consider the attitude of the Finance Member to be wholly inexplicable and unjustifiable.

Statesmanship and administrative efficiency and facility would seem to indicate that Government ought to agree to go back to E. P. T. instead of forcing the B. P. T. which the business community so much dislikes. Hence my protest against this unreasonable attitude of the Government over this fundamental matter. Hence my unwillingness to go into the details of this B. P. T. Bill.

NEW DELHI; N. G. RANGA.
The 19th March 1947.

L A BILL NO. 29 OF 1947

(AS AMENDED BY THE SELECT COMMITTEE)

(Words underlined or underlined indicate the amendments suggested by the Committee asterisks indicat omissions.)

A Bill to impose a special tax on a certain class of income

WHEREAS it is expedient to impose a special tax on income arising from business ;

It is hereby enacted as follows :—

Short title, extent and commencement

1. (*1*) This Act may be called the Business Profits Tax Act, 1947.

(*2*) It extends to the whole of British India.

(*3*) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

Interpretation

2. In this Act, unless there is anything repugnant in he subject or context,—

(*1*) " abatement " means, in respect of any chargeable accounting period, a sum which bears to a sum equal to—

(*a*) in the case of a company, not being a company deemed for the purposes of section 9 to be a firm, six per cent. or five per cent. of the capital of the company on the first day of the said period computed in accordance with Schedule II, according as the directors of the company respectively have or have not control of the company, or one lakh of rupees, whichever is greater, or

(*b*) in the case of a firm having—

(*i*) not more than two working partners, one lakh of rupees, or

(*ii*) three working partners, one and a half lakhs of rupees, or

(*iii*) four or more working partners, two lakhs of rupees , or

(*c*) in the case of a Hindu undivided family two lakhs of rupees, or

(*d*) in any other case, one lakh of rupees,

the same proportion as the said period bears to the period of one year ;

(*2*) " accounting period " in relation to any business means any period which is or has been determined as the previous year for that business for the purposes of the Indian Income-tax Act, 1922 ;

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(*3*) " business " includes any trade, commerce or manufacture, or any adventure in the nature of trade, commerce or manufacture, or any profession or vocation the profits of which are chargeable according to the provisions of section 10 of the Indian Income-tax Act, 1922 ;

Provided that where the functions of a company or of a society incorporated by or under any enactment consist wholly or mainly in the holding of inves ments or other property, the holding of the investments or property shall be deemed for the purpose of this definition to be a business carried on by such company or society:

Provided further that all businesses to which this Act applies carried on by the same person shall be treated as one business for the purposes of this Act;

(4) "chargeable accounting period" means—

(a) any accounting period falling wholly within the term beginning on the first day of April, 1946, and ending on the thirty-first day of March, 1947;

(b) where any accounting period falls partly within and partly without the said term, such part of that accounting period as falls within the said term;

(5) ("Company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession or of a law of an Indian State, and includes any foreign association, whether incorporated or not, which the Central Board of Revenue may, by general or special order, declare to be a company for the purposes of this Act; VII of 1913

(6) "control of a company" means control direct or indirect of more than one-half of the voting power attached to the total issued paid-up share capital of the company, or control vested by its Memorandum and Articles of Association otherwise than by reference to such voting power:

Provided that the voting power attached to shares held by a nominee or trustee for any person shall be deemed for the purpose of this definition to be held by that person;

(7) "deficiency of profits" means —

(i) where profits have been made in any chargeable accounting period, the amount by which such profits fall short of the abatement in respect of that period;

(ii) where a loss has been made in any chargeable accounting period, the amount of the loss added to the abatement in respect of that period;

(8) "director" includes any person occupying the position of a director by whatever name called and also includes any person who —

(i) is a manager of the company or concerned in the management of the business, and

(ii) is remunerated out of the funds of the business, and

(iii) is the beneficial owner of not less than twenty per cent. of the ordinary share capital of the company;

(9) "dividend" has the same meaning as in section 2 of the Indian Income-tax Act, 1922

(*10*) "firm", "partner" and "partnership" have the same meanings respectively as in the Indian Partnership Act, 1932;

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(*11*) "fixed rate" in relation to dividends on share capital, other than ordinary share capital, includes a rate fluctuating in accordance with the maximum rate of income-tax;

(*12*) "loss" means a loss computed in the same manner as, for the purposes of this Act, profits are to be computed;

(*13*) "ordinary share capital", in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders whereof have a right to a dividend at a fixed rate but have no ther right to share in the profits of the company;

(*14*) "person" includes a Hindu undivided family;

(*15*) "prescribed" means prescribed by rules made under this Act;

(*16*) "profits" means profits as determined in accordance with * Schedule I;

(*17*) "taxable profits" means the amount by which the profits during a chargeable accounting period exceed the abatement in respect of that period;

(*18*) "working partner" of a firm means a partner thereof who is required by the terms of the contract of partnership to devote substantially the whole of his time to the business of the firm.

Tax Authorities

3. (*1*) Every Commissioner of Income-tax, Appellate Assistant Commissioner of Income-tax, Inspecting Assistant Commissioner of Income-tax and Income-tax Officer shall have the like powers under this Act and in relation to the same area and cases as he exercises under the Indian Income-tax Act, 1922.

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(*2*) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Central Board of Revenue:

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner of Income-tax in the exercise of his appellate functions.

Charge of tax.

4. Subject to the provisions of this Act, there shall, in respect of any business to which this Act applies, be charged, levied and paid on the amount of the taxable profits during any chargeable accounting period, a tax (in this Act referred to as "business profits tax") which shall be equal to twenty-five per cent. of the taxable profits:

Provided that—

(*a*) any profits which are, under the provisions of sub-section (*3*) of section 4 of the Indian Income-tax Act, 1922, exempt from income-tax,

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(*b*) all profits from any business of life insurance,

(*c*) any sum paid to a business by or through the Central Government by way of bonus or subsidy,—

shall be totally exempt from business profits tax under this Act.

Application of Act.

5. This Act shall apply to every business of which any part of the profits made during the chargeable accounting period is chargeable to income-tax by virtue of the provisions of sub-clause (*i*) or sub-clause (*ii*) of clause (*b*) of sub-section (*1*) of section 4 of the Indian Income-tax Act, 1922, or of clause (*c*) of that sub-section : XI of 1922

Provided that this Act shall not apply to any business the whole of the profits of which accrue or arise without British India where such business is carried on by or on behalf of a person who is resident but not ordinarily resident in British India, unless the business is controlled in India :

Provided further that this Act shall not apply to any income, profits or gains of business accruing or arising within an Indian State unless such income, profits or gains are received or deemed under the provisions of the aforesaid Act to be received in or are brought into British India in any chargeable accounting period, or are assessable under section 42 of that Act.

Relief on occurrence of deficiency of profits.

6. Where a deficiency of profits occurs in any chargeable accounting period in any business, the taxable profits of the business shall be deemed to be reduced and relief shall be granted in accordance with the following provisions :—

(*a*) the aggregate amount of the taxable profits for the previous chargeable accounting periods shall be deemed to be reduced by the amount of the deficiency of profits and the amount of business profits tax payable in respect thereof shall be deemed to be reduced accordingly, and the relief necessary to give effect to the reduction shall be given by repayment or otherwise ;

(*b*) where the amount of the deficiency of profits exceeds the aggregate amount of the taxable profits for the previous chargeable accounting periods or where there is no previous chargeable accounting period, the balance of the deficiency of profits or the whole of the deficiency, as the case may be, shall be applied in reducing any taxable profits for the next subsequent chargeable accounting period, and if and so far as it exceeds the amount of those profits, any taxable profits for the next subsequent chargeable accounting period and so on.

Change in persons carrng business

7. As from the date of any change in the persons carrying on a business, the business shall be deemed for all the purposes of this Act to have been discontinued and a new business to have been commenced:

Provided that where a change takes place in the persons carrying on a business and where except for such change relief would be allowable under section 6, the Central Board of Revenue may, if it thinks fit, allow such relief under that section as it considers just, having regard to the extent to which the persons directly or indirectly interested in the business before the change remain interested therein after the change.

Interconnected companies.

8. (*1*) Where any interest, annuity, or other annual payment, or any royalty or rent, is payable by one company to another company, and one of those companies is a subsidiary of the other, or both are subsidiaries of a third company, and the recipient company is resident outside British India, no allowance shall be made in respect of such payment in computing the profits or losses of the paying company.

(*2*) Where—

(*a*) a company (hereinafter referred to as "the principal") is resident in British India and is not a subsidiary of any other company resident in British India; and

(*b*) during the whole or any part of any chargeable accounting period of the principal, another company resident or carrying on business within British India (hereinafter referred to as "the subsidiary") is a subsidiary of the principal

the capital or profits or losses of the subsidiary for such chargeable accounting period or part thereof shall be treated for the purposes of this Act as if they were the capital of, or as the case may be, profits or losses arising from the business of, the principal:

Provided that the profits of the subsidiary so treated shall not be exempted from business profits tax in the hands of the principal by reason of any exemption applicable to the principal under the proviso to section 4.

(*3*) Where the chargeable accounting periods of the principal and subsidiary are not co-terminous, such division and apportionment of the profits or losses of the subsidiary for any chargeable accounting period shall be made as will allocate the due proportion thereof to the relative chargeable accounting period or periods of the principal; and such division and apportionment shall be by reference to the proportion that the number of days of the chargeable accounting period of the subsidiary falling within the relative chargeable accounting period or periods of the principal bears to the total number of days in the chargeable accounting period of the subsidiary.

(*4*) For the purposes of this section a company shall be deemed to be a subsidiary of another company if and so long as not less than four-fifths of its ordinary share capital is beneficially owned by that other company, whether directly or through another company or other companies, or partly

directly and partly through another company or other companies.

(5) The business profits tax payable by virtue of this section by the principal shall, for the purposes of section 10, be allocated by the Income-tax Officer to the respective companies concerned in such proportion as in his opinion is just:

Provided that the principal shall have the same rights of appeal against an order of allocation made under this sub-section as it has under this Act against the amount of its business profits tax assessment.

Aggregation of profits in certain cases.

9. Where an individual is entitled to profits arising from more than one business, of which at least one is carried on by a firm in which he is a partner, the Income-tax Officer may, with the prior sanction of the Inspecting Assistant Commissioner of Income-tax, aggregate the shares of such individual in the profits or losses of all of such businesses and treat the sum of such aggregation as the profits of a business carried on by such individual and assess him accordingly:

Provided that if the accounting periods of such businesses are not co-terminous, the Income-tax Officer shall determine in respect of such individual his chargeable accounting period and shall make such divisions, apportionments and aggregation of the shares of such individual in the profits or losses of the several businesses as may be necessary to determine for such chargeable accounting period the total profits and gains of such individual therefrom:

Provided further that for the purposes of this section, a company, which is neither one in which the public are substantially interested, as defined in the *Explanation* to sub-section (*1*) of section 23A of the Indian Income-tax Act, 1922, nor a subsidiary company as defined in sub-section (*4*) of section 8 of this Act, shall be deemed to be a firm in which the persons having an interest in the company are partners, or, in the case of a sole-shareholder, a business carried on by that sole-shareholder, and the profits of such company shall be computed accordingly:

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Provided further that any profits or losses so aggregated for assessment upon an individual shall be excluded from the profits or losses of the respective businesses for the purposes of this Act; and no assessment under this Act shall be made in respect of any such business save in the names of the other partners therein

Allowance of business profits tax in computing income for income-tax purposes.

10. The amount of the business profits tax payable by any person for any chargeable accounting period shall, in computing total income for the purposes of the relevant income-tax or super-tax assessment, be allowed as a deduction:

Provided that where, under the provisions of this Act relating to deficiencies of profits relief is given by way of

repayment from business profits tax chargeable for any charge able accounting period previous to that in which the deficiency occurs, the amount of the deduction allowed shall not be altered, but the amount repayable shall be taken into account in computing the profits and gains of the business for the purposes of income-tax as if it were a profit of the business accruing in the previous year (as determined for that business for the purposes of the Indian Income-tax Act, 1922) in which the deficiency of profits occurs.

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Issue of notice for assessment.

11. (*1*) The Income-tax Officer may, for the purposes of this Act, require any person whom he believes to be engaged in any business to which this Act applies, or to have been so engaged during any chargeable accounting period, or to be otherwise liable to pay business profits tax, to furnish within such period, not being less than forty-five days from the date of the service of the notice, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) with respect to any chargeable accounting period specified in the notice the profits of the business or the amount of deficiency, if any, available for relief under section 6 :

Provided that the Income-tax Officer may, in his discretion, extend the date for the delivery of the return.

(*2*) The Income-tax Officer may serve on any person, upon whom a notice has been served under sub-section (*1*), a notice requiring him on a date to be therein specified to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require, and may from time to time serve further notices in like manner requiring the production of such further accounts or documents or other evidence as he may require.

Assessments.

12. (*1*) The Income-tax Officer shall, by an order in writing after considering such evidence, if any, as he has required under section 11, assess to the best of his judgment the profits liable to business profits tax and the amount of business profits tax payable on the basis of such assessment, or if there is a deficiency of profits, the amount of that deficiency and the amount of business profits tax, if any repayable, and shall furnish a copy of such order to the person on whom the assessment has been made.

(*2*) Business profits tax payable in respect of any chargeable accounting period shall be payable by the person carrying on, or treated as carrying on, the business in that period.

(*3*) Where two or more persons were carrying on the business jointly in the chargeable accounting period, the assessment shall be made upon them jointly and, in the case of a partnership, may be made in the partnership name.

(*4*) Where by virtue of the foregoing provisions an assessment could, but for his death, have been made on any person

either solely or jointly with any other person or persons, the assessment may be made on his legal representative either solely or jointly with that other person or persons, as the case may be.

Power to make provisional assessment

13. (*1*) The Income-tax Officer, before proceeding to make an assessment (in this section referred to as the regular assessment) under section 12, may, at any time after the expiry of the period specified in the notice issued under sub-section (*1*) of section 11 as that within which the return therein referred to is to be furnished, and whether the return has or has not been furnished, proceed to make in summary manner a provisional assessment of the taxable profits and the amount of business profits tax payable thereon.

(*2*) Before making such provisional assessment the Income-tax Officer shall give notice in the prescribed form to the person on whom assessment is to be made of his intention to do so, and shall with the notice forward a statement of the amount of the proposed assessment, and the said person shall be entitled to deliver to the Income-tax Officer at any time within fourteen days of receipt of the said notice a statement of his objections, if any, to the amount of the proposed assessment.

(*3*) On expiry of one month from the date of service of the notice referred to in sub-section (*2*), or earlier if the assessee agrees to the proposed assessment, the Income-tax Officer may, after taking into account the objections, if any, made under sub-section (*2*), make a provisional assessment, and shall furnish a copy of the order of assessment to the assessee:

Provided that assent to the amount of the assessment, or failure to make objection to it, shall in no way prejudice the assessee in relation to the regular assessment.

(*4*) In making any such provisional assessment the Income-tax Officer shall make allowance for any deficiencies of profits for previous chargeable accounting periods which are under the provisions of section 6 to be set off against the taxable profits of the chargeable accounting period in respect of which the assessment is being made:

Provided that, where such deficiencies of profits have not been determined under sub-section (*1*) of section 12, the Income-tax Officer shall estimate the amount thereof to the best of his judgment.

(*5*) There shall be no right of appeal against a provisional assessment made under this section, and it shall, until a regular assessment is made in due course under section 12, determine the amount of business profits tax due from the assessee.

(*6*) If, when a regular assessment is made in due course under section 12, the amount of business profits tax payable thereunder is found to exceed that determined as payable by the provisional assessment, it shall be reduced by the amount determined as payable by the provisional assessment.

(7) If, when a regular assessment is made in due course under section 12, the amount of business profits tax payable thereunder is found to be less than that determined as payable by the provisional assessment, any excess of tax paid as a result of the provisional assessment shall be refunded to the assessee, together with interest at two *per cent. per annum* calculated from the date of payment of such excess tax to the date of the order of refund, both days inclusive.

Profits escaping assessment.

14. If, in consequence of definite information which has come into his possession, the Income-tax Officer discovers that profits of any chargeable accounting period chargeable to business profits tax have escaped assessment, or have been underassessed, or have been the subject of excessive relief, he may at any time within four years of the end of the chargeable accounting period in question serve on the person liable to such tax a notice containing all or any of the requirements which may be included in a notice under section 11, and may proceed to assess or reassess the amount of such profits liable to business profits tax, and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under that section.

Penalties.

15. If the Income-tax Officer, the Appellate Assistant Commissioner of Income-tax or the Commissioner of Income-tax, in the course of any proceedings under this Act, is satisfied that any person has, without reasonable cause, failed to furnish the return required under sub-section (*1*) of section 11, or to produce or cause to be produced the accounts or documents or other evidence required by the Income-tax Officer under sub-section (*2*) of that section, or has concealed particulars of the profits of the business, or has deliberately furnished inaccurate particulars of such profits, he may direct that such person shall pay by way of penalty, in addition to the amount of any business profits tax payable, a sum not exceeding—

(*a*) where the person has failed to furnish the return required under sub-section (*1*) of section 11, the amount of the business profits tax payable;

(*b*) in any other case, the amount of business profits tax which would have been avoided if the return made had been accepted as correct:

Provided that the Income-tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner of Income-tax.

Appeals to Appellate Assistant Commissioner of Income-tax.

16. (*1*) Any person objecting to the amount of business profits tax for which he is liable as assessed by the Income-tax Officer or denying his liability to be assessed under this Act, or objecting to any penalty imposed by the Income-tax Officer, or to the amount of any deficiency of profits as assessed by the Income-tax Officer, or to the amount allowed by the Income-tax Officer by way of relief under any provision of this

Act or to any refusal by the Income-tax Officer to grant relief, may appeal to the Appellate Assistant Commissioner of Income-tax.

(2) An appeal shall ordinarily be presented within forty-five days of receipt of the notice of demand relating to the assessment or penalty objected to, or in the case of an appeal against the assessment of a deficiency of profits, within thirty days of the receipt of the copy of the order determining the deficiency, or in the case of an appeal against the amount of a relief granted or a refusal to grant relief, within forty-five days of the receipt of the intimation of the order granting or refusing to grant the relief, but the Appellate Assistant Commissioner of Income-tax may admit an appeal after the expiration of that period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) An appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(4) The Appellate Assistant Commissioner of Income-tax shall hear and determine the appeal and, subject to the provisions of this Act, shall pass such orders as he thinks fit, and such orders may include an order enhancing the assessment or a penalty:

Provided that an order enhancing an assessment or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(5) The procedure to be adopted in the hearing and determination of appeals shall be in accordance with the rules made by the Central Board of Revenue in relation to income-tax.

Appeal to Appellate Tribunal.

17. Any Income-tax Officer or any person in respect of whose business an order under section 12 has been passed and who objects to an order passed by an Appellate Assistant Commissioner of Income-tax under section 15 or section 16 may, within the prescribed time and in the prescribed manner, appeal against such order to the Appellate Tribunal constituted under the Indian Income-tax Act, 1922, and that Tribunal shall have all such powers in disposing of the appeal as it has in respect of appeals preferred to it under the said Act.

XI of 1922.

Rectification of mistakes.

. The Commissioner of Income-tax may, at any time within four years from the date of any order passed by any Appellate Assistant Commissioner of Income-tax or Income-tax Officer under this Act, rectify any mistake in any evidence recorded during assessment or appellate proceedings, or any mistake apparent from the record and shall within the like period rectify any mistake apparent from the record which has been brought to his notice by a person to whose business this Act applies:

Provided that no such rectification shall be made having the effect of enhancing the liability of any person unless that

person has been given a reasonable opportunity of being heard.

Application of provisions of Act XI of 1922. XV of 1940

19. The sections of the Indian Income-tax Act, 1922, as applied to excess profits tax by virtue of section 21 of the Excess Profits Tax Act, 1940, shall, in so far as they are not repugnant to the provisions of this Act, apply to business profits tax as they apply to excess profits tax.

Income-tax papers to be available for the purposes of this Act. XI of 1922

20. (*1*) Notwithstanding anything contained in the Indian Income-tax Act, 1922, all information contained in any statement or return made or furnished under the provisions of that Act or obtained or collected for the purposes of that Act may be used for the purposes of this Act.

(*2*) All information contained in any statement or return made or furnished under the provisions of this Act or obtained or collected for the purposes of this Act may be used for the purposes of the Indian Income-tax Act, 1922.

Failure to deliver returns or statements.

21. If any person fails, without reasonable cause or excuse, to furnish in due time any return or statement, or to produce, or cause to be produced, any accounts or documents required to be produced under section 11, he shall be punishable with fine which may extend to five hundred rupees, and with a further fine which may extend to fifty rupees for every day during which the default continues.

False statements.

22. If a person makes in any return required under section 11 any statement which is false, and which he either knows or believes to be false or does not believe to be true, he shall be punishable with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Institution of proceedings and composition of offences.

23. (*1*) A person shall not be proceeded against for an offence under section 21 or section 22 except at the instance of the Inspecting Assistant Commissioner of Income-tax.

XIV of 1860

(*2*) No prosecution for an offence punishable under section 21 or section 22 or under the Indian Penal Code shall be instituted in respect of the same facts as those in respect of which a penalty has been imposed under this Act.

(*3*) The Inspecting Assistant Commissioner of Income-tax may, either before or after the institution of proceedings, compound any offence punishable under section 21 or section 22.

Power to make rules.

24. (*1*) The Central Board of Revenue may, subject to the control of the Central Government, make rules for carrying out the purposes of this Act.

(*2*) Without prejudice to the generality of the foregoing power, such rules may—

(*a*) prescribe the procedure to be followed on appeals, applications for rectification of mistakes, and applications for refunds;

(*b*) provide for any matter which by, or under, this Act is to be prescribed.

(3) The power to make rules conferred by this section shall be exercised in like manner as the power to make rules under section 59 of the Indian Income-tax Act, 1922 XI of 1922

"SCHEDULE I

[*See* SECTION 2 (*16*).]

Rules for the computation of profits for purposes of Business Profits Tax.

1. The profits of a business during any chargeable accounting period shall be separately computed, and shall, subject to the provisions of this Schedule, be computed in accordance with the provisions of section 10 of the Indian Income-tax Act, 1922 : XI of 1922

Provided that any sums other than any interest paid by a firm to a partner of the firm excluded under the proviso to clause (*iii*) of sub-section (*2*) or clause (*a*) of sub-section (*4*) of that section from the allowances made in computing the profits of the business for the purposes of income-tax shall, if paid, be included in those allowances when computing the profits of the business for the purposes of business profits tax

Provided further—

(*a*) that any sums received or credited in a chargeable accounting period which by virtue of rule 9 of Schedule I to the Excess Profits Tax Act, 1940, have been treated as business receipts for the purpose of assessment to excess profits tax ; and XV of 1940

(*b*) any expenditure or loss incurred in any chargeable accounting period, allowance in respect of which has been made for excess profits tax purposes,

shall be disregarded in computing the profits or losses of the chargeable accounting period :

Provided further that where a chargeable accounting period is not an accounting period, the profits or losses of the business during the accounting periods wholly or partly included within the chargeable accounting period shall be so computed as aforesaid, and such division and apportionment to specific periods of those profits or losses and such aggregation of those profits and losses, or any apportioned part thereof, shall be made as appears necessary to arrive at the profit during the chargeable accounting period ; and any such apportionment shall be made in proportion to the number of days in the respective periods.

2. (*1*) The principle of adding the allowance for depreciation for any one period to the allowance for depreciation for any subsequent period and deeming it to be part of the allowance for such subsequent period shall not be followed

(*2*) Nothing in this Act shall be construed as permitting the application, in computing profits for the purposes of business profits tax, of the provisions of sub-section (*2*) of section 24 of the Indian Income-tax Act, 1922. XI of 1922

3. Income received from investments or other property shall be included in the profits only as provided in this rule, that is to say,—

(*a*) in the case of the business of a building society, or a banking business, insurance business or business consisting wholly or mainly in the dealing in or holding of investments or other property, the profits shall include all income received from investments or other property ; or

(*b*) in the case of a business part of which consists in banking, insurance or dealing in investments or other property, not being a business to which clause (*a*) applies, the profits shall include all income received from investments or other property held for the purposes of that part of that business :

Provided that—

(*i*) income received directly or indirectly by way of dividend or distribution of profits from a body corporate carrying on business as defined in this Act, and

(*ii*) income to which the persons carrying on the business are not beneficially entitled,—

shall in no case be included.

4. (*1*) In the case of a business carried on, in any accounting period which constitutes or includes a chargeable accounting period, by a company, the directors whereof have throughout that accounting period a controlling interest therein, no deduction shall be made in respect of directors' remuneration in computing the profits for that accounting period

(*2*) Where, in the case of a business carried on by a company in any accounting period which constitutes or includes a chargeable accounting period, the directors of the company have during any part of that accounting period a controlling interest therein, and the case is not one to which sub-rule (*1*) applies, the profits of the accounting period shall be computed as if the directors of the company had no controlling interest therein, and to the part thereof appropriate to the chargeable accounting period ascertained in accordance with the third proviso to rule 1 shall be added the directors' remuneration for that part of the chargeable accounting period during which the directors of the company had a controlling interest therein.

(*3*) In this rule the expression "directors' remuneration" does not include—

(*a*) the remuneration of any director who is required to devote substantially the whole of his time to the service of the company in a managerial or technical capacity and is not the beneficial owner of, or able either directly or through the medium of other companies or by any other indirect means, to control more than five per cent. of the ordinary share capital of the company, or

(*b*) the remuneration of any managing agent where such remuneration is included in the profits of the managing agent's business for the purposes of the business profits tax.

5. (*1*) In computing the profits of any chargeable accounting period no deduction shall be allowed in respect of expenses in excess of the amount which the Income-tax Officer considers reasonable and necessary, having regard to the requirements of the business, and, in the case of directors' fees or other payments for services, to the actual services rendered by the person concerned :

Provided that no disallowance under this rule shall be made by the Income-tax Officer unless he has obtained the prior authority of the Inspecting Assistant Commissioner of Income-tax.

(*2*) Any person who is dissatisfied with the decision of the Income-tax Officer under this rule may appeal in the prescribed time and manner to the Appellate Tribunal referred to in section 17.

SCHEDULE II

[*See* SECTION 2 (1)]

Rules for computing the capital of a company for purposes of Business Profits Tax

1. For the purposes of ascertaining the abatement under this Act in respect of any chargeable accounting period the capital of a company shall be computed in accordance with the following rules.

2. (*1*) Where the company is one to which clause (*a*) of rule 3 of Schedule I applies, its capital shall be the sum of the amounts of its paid-up share capital and of its reserves in so far as they have not been allowed in computing the profits of the company for the purposes of the Indian Income-tax Act 1922.

(*2*) Where the company is one to which clause (*b*) of rule 3 of Schedule I applies, its capital, ascertained in accordance with sub-rule (*1*) of this rule shall be diminished by the cost to it of its investments or other property, the income from which is not includible in the profits, so far as that cost exceeds any debt for money borrowed by it.

(*3*) In all other cases, the capital shall be the sum ascertained in accordance with the said sub-rule, diminished by the cost to the company of its investments so far as that cost exceeds any debt for money borrowed by it.

3. Any deposits with the Central Government under section 10 of the Indian Finance Act, 1942, or section 2 of the Excess Profits Tax Ordinance, 1943, shall not be regarded as investment or other property for the purposes of this Schedule.

The following Report of the Select Committee on the Bill further to amend the Indian Income-tax Act, 1922, and the Excess Profits Tax Act, 1940, was presented to the Legislative Assembly on the 19th March, 1947:—

We, the undersigned, members of the Select Committee to which the Bill further to amend the Indian Income-tax Act, 1922, and the Excess Profits Tax Act, 1940, was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

Clause 2.—Our amendment is purely formal, it being well established that the expression "property" includes actionable claims.

Clause 6.—Our first amendment limits liability to profits and gains arising from transactions taking place than the end of March 1946. We also consider that the figure of Rs. 00 is too low as the limit below which capital gains will not be taxed and have increased this figure to Rs. 15,000. And we propose to exempt from liability to the tax capital gains arising from—

(*a*) the sale of house property which has been in the assessee's possession for not less than seven years;

(*b*) compensation awarded for the compulsory acquisition of property for public purposes;

(*c*) transfers by a principal company to a 100% subsidiary.

On the other hand, we insert a provision aimed at the prevention of evasion by transfers to connected persons. Finally we propose an additional subsection to the new section 12-B for the purpose of affording some relief in cases where the transactions are for the purpose of replacement of assets employed in the business or are by reason of a change of residence.

Clause 8.—We feel that the concession in favour of assessees other than companies which the original clause provides does not go far enough, and that the income derived from capital gains should not in such cases be lumped with other income and assessed with it. We propose therefore that in these cases, the amount assessed at the normal rates should be the total income reduced by the amount of capital gains, and that these capital gains should be assessed separately. We introduce a scale applicable to capital gains, beginning with a rate of one anna in the rupee on the whole capital gains where these do not exceed Rs. 50,000, and rising by one anna stages up to a rate of 5 annas in the rupee on the whole amount of the capital gains where that amount exceeds ten lakhs of rupees. Provision for marginal relief is included. The capital gains of a company will be exempt from company super-tax, but not from additional super-tax if it distributes dividends above the prescribed limit.

Clause 10.—We raise the maximum limit of the carry forward of capital losses to Rs. 15,000 consequentially upon our raising of the tax-free limit for capital gains.

Clause 13.—We propose to limit the power to treat as the agent of a person residing out of British India a person who acquires capital assets from such person to the cases of transactions occurring after the introduction of this Bill.

Clause 10.—The purpose of this clause is to enable assessments in cases where the period of five years has already expired, and to avoid doubts as to whether the amendment made in the Bill is sufficient, for this purpose, we propose to give it retrospective effect.

2. The Bill was published in the official Gazette on the 8th March, 1947.

3. We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

JOGENDRA NATH MANDAL.

LIAQUAT ALI KHAN.

P. J. GRIFFITHS.

GEOFFREY W. TYSON.

MOHAMMAD YAMIN KHAN.

K. NAZIMUDDIN.

MUHAMMAD NAUMAN.

H. A. S. H. ISHAQ SETH.

*K. C. NEOGY.

*MANU SUBEDAR.

*D. CHAMAN LALL.

*VADILAL LALLUBHAI.

*MOHAN LAL SAKSENA.

*N. G. RANGA.

*SATYA NARAYAN SINHA.

*M. R. MASANI.

N. M. JOSHI.

SHAVAX A. LAL.

JOHN SHEEHY.

C. W. AYERS.

NEW DELHI;

The 19th March, 1947.

*Subject to a minute or minutes of dissent.

MINUTES OF DISSENT

I

This Bill seeks to include capital gains within the definition of income under the Indian Income-Tax Act, 1922, and Excess Profits Tax Act, 1940, and thus marks a fundamental departure from the Income-tax policy followed by the Government so far. The Indian Law which is substantially based upon the principles of the British Income-tax law, has deliberately excluded casual gains from the category of income. The idea underlying this Bill has been borrowed from the United States of America where any realised accretion to capital is treated as income. There is, however, a real difference in the American and the British conceptions of such receipts. Indeed, the psychological approach to the entire problem is different in these two countries.

According to the British view such an impost would be in the nature of a levy on capital and not a tax on income. In 1920 the British Royal Commission on the Income tax reported in favour of extending the scope of the British law to include as subjects of taxation certain casual profits. The Commission did not recommend the adoption of the all inclusive American scheme, but suggested that there should be subjected to income-tax those casual profits made in transactions recognizable as business transactions, *i.e.*, those in which the subject-matter was acquired with a view to its disposition at a profit. Even this cautious recommendation was not adopted in Great Britain. It has to be stated, however, that as an interpretation of the income-tax law in Britain—as well as in India—profits from a sale or re-sale of assets would be assessable to income-tax if the transaction can be regarded as an incident of a trade or business.

In his Budget speech, the Finance Member referred to the large capital gains that have been made in recent years and are still being made "owing to prevailing conditions", and described these gains as "unearned increment", for taxing which there was a stronger justification than for taxing ordinary income. The Hon'ble Member referred to what he described as a lacuna which this measure was intended to remove. As observed above, the present state of law which excluded casual gains from the purview of income-tax is the result of a deliberate policy. Among the prevailing conditions referred to by him, inflation is the principal one, and it is hardly fair to ignore this factor that contributes towards the high prices of capital assets. If, however, it were intended merely for the purpose of taxing speculative gains during the prevalance of abnormal circumstances, the Bill should have been a short term measure. But the proposed law would be a permanent supplement to the Income-Tax Act.

Though the Bill is based upon American precedent, we are afraid that the authorities have not made a full study of the circumstances that justify its operation in America, or of the history of its administration. No information on these points has been made available to us beyond the text of the law on the subject. From what we have been able to gather, however, American experience in this matter, and the periodical changes in the relevant law effected there, should have a bearing on the consideration of the present proposal. Likewise, the British view should be given adequate importance. In the absence of much-needed information on these points, we feel very much handicapped in the consideration of the Bill which bristles with complexities.

In the case of an asset dating from before the 1st January, 1939, its valuation as on that date may be adopted for purposes of calculating the gain realised by a subsequent sale. The Income-tax Officer has been entrusted with the authority of making this valuation, but it is not known what factors are expected to be considered in determining the market value as on the said date, nor is it obvious as to why this particular date has been adopted for this purpose. As regards the factors that may be said to determine the value of an asset on any given date, the following are among those that are taken into account in America :—

(*a*) Sales or actual dealings in similar property.

(*b*) Appraisals and opinions of experts.

(*c*) Retrospective appraisals.

(*d*) Cost of reproduction.

(*e*) Capitalisation of income.

(*f*) Prorating the increase in value on a time basis.

(*g*) Book value.

It will be observed that the element of inflation would indirectly be set off, if the above tests were applied to a valuation. The determination of the value of property in America follows an elaborate procedure intended to ensure a fair deal for the assessee. Simplicity, on the other hand, has been claimed as a merit of the present taxation proposals, but we are afraid that for the sake of such simplicity, many of the safeguards and limitations recognised in U. S. A. have been overlooked.

We have to point out that the very vast difference in economic conditions and wealth accretion between U.S.A. and India have been ignored in framing this measure. The rapidity with which capital assets change hands in U.S.A., is very much greater than even that which exists in European countries and the United Kingdom, and the caution and circumspection, which should have been employed in drawing a parallel from U.S.A. from this point of view do not appear to have been bestowed by government on this measure.

The above considerations assume some importance in view of the fact that an Estate Duty Bill has been introduced in the Assembly, under which capital assets of all kinds belonging to an individual will come under a levy when they pass from an individual to his heirs. The clarification of Government's policy on the matter of the Estate Duty should precede the final adoption of this measure if and when the House decides to take it up.

One of the guiding principles of the U.S.A. law is to distinguish between short-term gains and long-term gains for purposes of assessment, the present line of demarcation being a period of six months. Although in the original Bill, this principle was conceded, the Bill as amended in the Select Committee has removed this distinction. We are advised that in the U.S.A. in the case of long-term gains they may be reduced to 50 per cent. of their amount in assessing income-tax, or, at the option of the assessee they may be taxed separately at a maximum rate of 25 per cent. The incidence of taxation proposed in this Bill is certainly higher in the maximum scale. We are further informed that in the U.S.A. in 1938, "property, used in the trade or business of a character which is subject to allowance for depreciation" was excluded from the definition of capital assets ; and that in 1942 and 1943 changes made in the law had the effect of excluding the sale of real estate if it had been held for not less than six months.

This measure may well have the effect of placing restrictions on business and free exchange of capital which may become less liquid The amount of tax estimated by Government as likely to be realised in the Budget year under the amended provisions of the Bill is about Rupees 2 crores. This in our view is a gross under-estimate. Taking into consideration transaction widely known, the yield will be considerably higher.

We are convinced that an expert enquiry should be made into all those complex problems and their implications on the structure of business and society in this country should fully be examined. In any event, such a measure which is foreign to the Indian tax structure, should not be rushed through in its present form.

We regret our suggestion for an expert enquiry was summarily turned down. Because we are second to none in our antiety to tax capital gains resulting from speculation activities, we further suggested that pending the enquiry the scope of the Bill should be restricted to easily ascertainable specific assets which lend themselves, more than others, to speculative gains in the period immediately after the close of the war. These are—

(1) Business concerns as a whole ;

(2) Stocks, Shares, Securities and Bullion.

We shall urge that this should be the course adopted by the House. With regard to other forms of assets, such as residential property, jewellery and other personal effects, we suggest that no action may be taken pending the enquiry recommended by us and that Government should submit their proposals to the House after fully considering the results of such enquiry.

MANU SUBEDAR
MOHAN LAL SAKSENA
M. R. MASANI
K. C. NEOGY
VADILAL LALLUBHAI
N. G. RANGA
SATYA NARAYAN SINHA
D. CHAMAN LALL

NEW DELHI ;
The 19th March 1947.

II

Gain accruing from the sale of capital assets in native states or foreign countries by a resident of British India should be exempted from the scope of this Bill provided the amount so realised from the sale of such capital assets is not brought into British India.

VADILAL LALLUBHAI.

NEW DELHI ;
The 19th March 1947.

L. A. BILL NO. 30 OF 1947

(BILL AS AMENDED BY THE SELECT COMMITTEE)

(Words underlined or sidelined indicate the amendments suggested by the Committee ; asterisks indicate omissions.)

A Bill further to amend the Indian Income-tax Act, 1922, and the Excess Profits Tax Act, 1940.

WHEREAS it is expedient further to amend the Indian Income-tax Act, 1922, and the Excess Profits Tax Act, 1940, for the purposes hereinafter appearing ; — XI of 1922. XV of 1940.

It is hereby enacted as follows :—

CHAPTER I

Preliminary

1. (*1*) This Act may be called the Income-tax and Excess Profits Tax (Amendment) Act, 1947. Short title and commencement.

(*2*) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

CHAPTER II

Amendments of Act XI of 1922

2. In section 2 of the Indian Income-tax Act, 1922 (hereafter in this Chapter referred to as the said Act),— Amendment of section 2, Act XI of 1922.

(*a*) clause (*4A*) shall be renumbered as clause (*4B*), and after clause (*4*) the following clause shall be inserted, namely :—

'(*4A*) "capital asset" means property of any kind (other than agricultural land) *not * * * held by an assessee, whether or not connected with his business, profession or vocation, but does not include any stock-in-trade, consumable stores or raw materials held for the purposes of his business, profession or vocation ; '

(*b*) for the *Explanation* to clause (*6A*) the following shall be substituted, namely :—

'Provided further that the expression "accumulated profits", wherever it occurs in this clause, shall not include capital gains of any previous year prior to the previous year for the assessment for the year ending on the 31st day of March 1948 ; '

(*c*) in clause (*6C*), after the word and figures "section 10", the words, figures and letter "and any capital gain chargeable according to the provisions of section 12B" shall be inserted ;

(*d*) in clause (*15*), for the words "does not apply ; and" the words "does not apply and except any capital gain which is not includible in the total income of an assessee ; " shall be substituted.

Amendment of section 4, Act XI of 1922.

3. In sub-section (*3*) of section 4 of the said Act, --

(*a*) to clause (*iv*) the words "and any capital gains of the Fund arising from the sale, exchange or transfer of such securities" shall be added;

(*b*) in clause (*vii*), after the words "Any receipts" the words, figures and letter "not being capital gains chargeable according to the provisions of section 12B and" shall be inserted.

Amendment of section 4-A, Act XI of 1922.

4. To clause (*c*) of section 4A of the said Act, the words 'account not being taken in either case of income chargeable under the head "Capital gain"' shall be added.

Amendment of section 6, Act XI of 1922.

5. To section 6 of the said Act the following clause shall be added, namely :—

"(*vi*) Capital gains".

Insertion of new section 12B in Act XI of 1922.

6. After section 12A of the said Act the following section shall be inserted, namely :—

'12B. (*1*) The tax shall be payable by an assessee under the head "Capital gains" in respect of any profits or gains arising from the sale, exchange or transfer of a capital asset effected after the 31st day of March 1946; and such profits and gains shall be deemed to be income of the previous year in which the sale, exchange or transfer took place :

Capital gains.

Provided that where the amount of capital gains in the previous year does not exceed fifteen thousand rupees, the tax shall not be payable by the assessee and such amount shall not be included in his total income :

Provided further that the tax shall not be payable by an assessee in respect of any profits or gains arising from the sale, exchange or transfer of a capital asset, being property the income of which is chargeable under section 9 and which has been possessed by the assessee for not less than seven years before the date on which the sale, exchange or transfer took place; and the amount of such profits or gains shall not be included in his total income :

Provided further that any transfer of capital assets by reason of the compulsory acquisition thereof under any law for the time being in force relating to the compulsory acquisition of property for public purposes or any distribution of capital assets on the total or partial partition of a Hindu undivided family, or on the dissolution of a firm or other association of persons, or on the liquidation of a company, or under a deed of gift, bequest, will or transfer on irrevocable trust shall not, for the purposes of this section, be treated as sale, exchange or transfer of the capital assets :

Provided further that the transfer of a capital asset by a company to a subsidiary company, the whole of the share capital of which is held by the parent company or by the nominees thereof, shall not be treated as a sale, exchange o

transfer within the meaning of this section where the subsidiary company is resident in British India and is registered under the Indian Companies Act, 1913, so however that for the purposes of clause (*vi*) or clause (*vii*) of sub-section (*2*) of section 10, the cost or the written down value, as the case may be, of the transferred capital asset shall be taken to be the same as it would have been if the parent company had continued to hold the capital asset for the purposes of its business. VII of 1913

(*2*) The amount of a capital gain shall be computed after making the following deductions from the full value of the consideration for which the sale, exchange or transfer of the capital asset is made, namely :—

(*i*) expenditure incurred solely in connection with such sale, exchange or transfer ;

(*ii*) the actual cost to the assessee of the capital asset, including any expenditure of a capital nature incurred and borne by him in making any additions or alterations thereto, but excluding any expenditure in respect of which any allowance is admissible under any provision of sections 8, 9, 10 and 12 :

Provided that where a person who acquires a capital asset from the assessee, whether by sale, exchange or transfer, is a person with whom the assessee is directly or indirectly connected, and the Income-tax Officer has reason to believe that the sale, exchange or transfer was effected with the object of avoidance or reduction of the liability of the assessee under this section, the full value of the consideration for which the sale, exchange or transfer is made shall, with the prior approval of the Inspecting Assistant Commissioner of Income-tax, be taken to be the fair market value of the capital asset on the date on which the sale, exchange or transfer took place :

Provided further that where the capital asset is an asset in respect of which the assessee has obtained depreciation allowance in any year, the actual cost of the asset to the assessee shall be its written down value, as defined in section 10, increased or diminished, as the case may be, by any adjustment made under clause (*vii*) of sub-section (*2*) of that section :

Provided further that where the capital asset became the property of the assessee before the 1st day of January 1939, he may, on proof of the fair market value thereof on the said date to the satisfaction of the Income-tax Officer, substitute for the actual cost such fair market value which shall be deemed to be the actual cost to him of the asset, and which shall be reduced by the amount of depreciation, if any, allowed to the assessee after the said date and increased or diminished, as the case may be, by any adjustment made under clause (*vii*) of sub-section (*2*) of section 10 :

Provided further that where the capital asset was on any previous occasion the subject of negotiations for its sale, exchange or transfer, any option or other money received and

retained by the assessee in respect of such negotiations shall be deducted in computing the actual cost to him of such asset.

(3) Where any capital asset became the property of the assessee under any of the circumstances referred to in the second proviso to sub-section (1), its actual cost allowable to him for the purposes of this section shall be its actual cost to the previous owner thereof, and the provisions of sub-section (2) shall apply accordingly; and where the actual cost to the previous owner cannot be ascertained, the fair market value at the date on which the capital asset became the property of the previous owner shall be deemed to be the actual cost thereof.

(4) Notwithstanding anything contained in sub-section (1), where a capital gain arises from the sale, exchange or transfer of a capital asset which immediately before the date on which the sale, exchange or transfer took place was being used by the assessee for the purposes of his business, profession or vocation, or which in the two years immediately preceding that date was being used by him or a parent of his mainly for the purposes of his own or the parent's own residence, and the assessee has within a period of one year before or after that date purchased a new capital asset for the same purposes of his business, profession or vocation or, as the case may be, for the purposes of his own residence, then instead of the capital gain being charged to tax as income of the previous year in which the sale, exchange or transfer took place, it shall, if the assessee so elects in writing before the assessment is made be dealt with in accordance with the following provisions of this sub-section, that is to say,—

(*a*) if the amount of the capital gain is greater than the cost of the new asset,—

(*i*) the difference between the amount of the capital gain and the cost of the new asset shall be charged under this section as income of the previous year, and

(*ii*) for the purposes of computing in respect of the new asset any allowance under clause (*vi*) or clause (*vii*) of sub-section (2) of section 10 or the amount of any capital gain arising from its sale, exchange or transfer, the cost or the written down value, as the case may be, shall be *nil*, or

(*b*) if the amount of the capital gain is equal to or less than the cost of the new asset,—

(*i*) the capital gain shall not be charged under this section, and

(*ii*) for the purposes of computing in respect of the new asset any allowance under the said clause (*vi*) or any allowance or adjustment under the said clause (*vii*) or the amount of any capital gain arising from its sale, exchange or transfer

the cost or the written down value, as the case may be, shall be reduced by the amount of the capital gain :

Provided that where in respect of the purchase of a new capital asset consisting of plant or machinery the assessee satisfies the Income-tax Officer that despite the exercise of due diligence it has not been possible to make the purchase within the period specified in this sub-section, the Income-tax Officer may, with the prior approval of the Inspecting Assistant Commissioner of Income-tax, extend the said period to such date as he considers reasonable.

Amendment of section 14, Act XI of 1922.

7. In clause (*c*) of sub-section (2) of section 14 of the said Act, after the words " are assessable under " the words, figures and letter " section 12B or " shall be inserted.

Amendment of section 17, Act XI of 1922.

8. To section 17 of the said Act the following sub-sections shall be added, namely :—

"(6) Where the total income of an assessee not being a company, includes any income chargeable under the head " Capital gains ", the tax, including super-tax, payable by him on his total income shall be—

(*i*) income-tax and super-tax payable on his total income as reduced by the amount of such inclusion, had such reduced income been his total income, *plus*

(*ii*) income-tax on the whole amount of such inclusion at the following rates, namely :—

where such amount—	Rate.
exceeds Rs. 15,000 but does not exceed Rs. 50,000	One anna in the rupee,
exceeds Rs. 50,000 but does not exceed Rs 2,00,000	Two annas in the rupee,
exceeds Rs. 2,00,000 but does not exceed Rs. 5,00,000	Three annas in the rupee,
exceeds Rs. 5,00,000 but does not exceed Rs. 10,00 000	Four annas in the rupee,
exceeds Rs. 10,00,000	Five annas in the rupee :

Provided that where owing to the fact that the amount of such inclusion has exceeded a certain limit, income-tax thereon is payable or is payable at a higher rate, the amount of income-tax so payable shall be reduced so as not to exceed—

(*a*) the amount which would have been payable if the amount of such inclusion had not exceeded that limit, *plus*

(*b*) one-half of the amount by which the amount of such inclusion exceeds that limit.

(7) Where the total income of a company includes any income chargeable under the head " Capital gains ", the super-tax payable by the company in any year shall be reduced by an amount computed on that part of its total income which consists of such inclusion at the rate of super-tax (excluding

the rate of additional super-tax, if any) specified in the case of company by the annual Act of the Central Legislature fixing the rate or rates of tax for that year.'

Amendment of section 18A, Act XI of 1922.

9. To section 18A of the said Act the following sub-section shall be added, namely :—

'(*12*) Any income chargeable under the head "Capital gains" shall not be taken into account for any of the purposes of this section.'

Amendment of section 24, Act XI of 1922.

10. In section 24 of the said Act, after sub-section (*2*) the following sub-sections shall be inserted, namely :—

'(*2A*) Notwithstanding anything contained in sub-section (*1*), where the loss sustained is a loss falling under the head "Capital gains", such loss shall not be set off except against any profits and gains falling under that head.

(*2B*) Where an assessee sustains a loss such as is referred to in sub-section (*2A*) and the loss cannot be wholly set off in accordance with the provisions of that sub-section, the portion not so set off shall be carried forward to the following year and set off against capital gains for that year, and if it cannot be so set off, the amount thereof not so set off shall be carried forward to the following year and so on, so however that no such loss shall be so carried forward for more than six years :

Provided that where the loss sustained in any previous year does not exceed fifteen thousand rupees, it shall not be carried forward.'

Amendment of section 38, Act XI of 1922.

11. To section 38 of the said Act the following clause shall be added, namely :—

"(*4*) require any dealer, broker or agent or any person concerned in the management of a stock or commodity Exchange to furnish a statement of the names and addresses of all persons to whom he or the Exchange has paid any sum in connection with the sale, exchange or transfer of a capital asset, or on whose behalf or from whom he or the Exchange has received any such sum, together with particulars of all such payments and receipts."

Amendment of section 42, Act XI of 1922.

12. In section 42 of the said Act,—

(*a*) for the marginal heading the following shall be substituted, namely :—

"Income deemed to accrue or arise within British India";

(*b*) in sub-section (*1*), after the words "in cash or in kind," the words "or through or from the sale, exchange or transfer of a capital asset in British India," shall be inserted

Amendment of section 43, Act XI of 1922.

13. To section 43 of the said Act the following *Explanation* shall be added, namely :—

"*Explanation*—A person, whether residing in or out of British India, who acquires, after the 28th day of February

1947, whether by sale, exchange or transfer, a capital asset in British India from a person residing out of British India shall, for the purposes of charging to tax the capital gain arising from such sale, exchange or transfer, be deemed to have a business connection, within the meaning of this section, with such person residing out of British India."

Amendment of section 58C, Act XI of 1922.

14. In clause (*d*) of sub-section (*1*) of section 58C of the said Act, after the words "securities purchased therewith," the words "and of any capital gains arising from the sale, exchange or transfer of capital assets of the fund," shall be inserted.

Amendment of section 58R, Act XI of 1922.

15. In section 58R of the said Act, after the words "deposits of an approved superannuation fund" the words "and any capital gains arising from the sale, exchange or transfer of capital assets of such fund" shall be inserted.

CHAPTER III

Amendments of Act XV of 1940.

Amendment of section 15, Act XV of 1940.

16. In section 15 of the Excess Profits Tax Act, (hereafter in this Chapter referred to as the said Act), the words "within five years of the end of the chargeable accounting period in question" shall be omitted, and shall be deemed always to have been omitted.

Insertion of new section 26A in Act XV of 1940.

17. After section 26 of the said Act the following section shall be inserted, namely :—

"26A. (*1*) If on an application made to it through the Excess Profits Tax Officer, the Central Board of Revenue is satisfied that a person who in a chargeable accounting period ending on the 31st day of March 1946, carried on a business the profits of which for any chargeable accounting period are charged with excess profits tax,—

Further powers of Central Board of Revenue to grant certain relief.

(*i*) incurred during the period commencing on the 1st day of April 1946 and ending on the 31st day of December 1947, in connection with that business,—

(*a*) expenditure on the removal of works constructed for protection against enemy attack ;

(*b*) where under the orders of a competent authority the business was wholly or partly removed during the war, expenditure on again removing the business or part thereof;

(*c*) where any physical assets held for the purposes of the business were altered to adapt them to war conditions, expenditure on re-adapting them to normal requirements ;

(*d*) expenditure in consequence of the termination of any contract for the supply of goods, materials or services, or the lease of buildings or machinery to him, where that contract is terminated by reason of the

termination of a contract for the provision by him of goods, materials or services for the purposes of the war ; or

(*ii*) incurred during the period commencing on the 1st day of April 1946 and ending on the 31st day of December 1947, a loss on the sale of trading stock held on the 31st day of March 1946 for the purposes of the business ; or

(*iii*) incurred in any accounting period ending on or before the 31st day of March 1946 in connection with that business any expenditure referred to in the sub-clauses of clause (*i*) which, except under the provisions of this sub-section, is not allowable, either wholly or partly, in computing the profits of such accounting period :—

the Central Board of Revenue may direct that such allowance as it thinks just shall be made in computing the profits of the business during the chargeable accounting period ending on the 31st day of March 1946, and effect shall be given to such direction by repayment or otherwise, as the case may require :

Provided that in giving any such direction, the Central Board of Revenue may impose such conditions as it considers appropriate :

Provided further that where the applicant satisfies the Central Board of Revenue that it was not possible to complete any work referred to in sub-clauses (*a*), (*b*) and (*c*) of clause (*i*) within the period specified in that clause, the Central Board of Revenue may extend the said period to such date as it considers reasonable :

Provided further that, where any change has taken place in the persons carrying on the business, the persons carrying it on after the change shall have the same right to make an application under this sub-section in respect of any expenditure referred to in sub-clauses (*b*) and (*c*) of clause (*i*) as the persons previously carrying on the business would have had if there had been no such change.

(*2*) Where an accounting period included, but did not end on, the 31st day of March 1946, all expenditure referred to in the sub-clauses of clause (*i*) of sub-section (*1*) which would, apart from the provisions of this sub-section and rule 11 of Schedule I, be allowable as a deduction in computing the profits of the said accounting period, shall be treated for the purposes of sub-section (*1*) as if it were incurred after that day, and if an application is made under this section no deduction from, or in computing, the profits of any accounting period or chargeable accounting period shall be allowed in respect of such expenditure otherwise than under sub-section (*1*)

(*3*) Where a change takes place in the persons carrying on a business, or a person carrying on a business, being a body corporate, becomes or ceases to be a subsidiary company or

principal company within the meaning of sub-section (6) of section 9, and where except for the happening of that event relief would be allowable under this section, the Central Board of Revenue may, if it thinks fit, allow such relief under this section as it considers just, having regard to the extent to which the persons directly or indirectly interested in the business or body corporate, as the case may be, before the change remain interested therein after the change."

Amendment of Schedule I, Act XV of 1940.

18. To the first paragraph of rule 11 of Schedule I to the said Act the following proviso shall be added, namely :—

"Provided that where any loss or expenditure incurred during the period commencing on the 1st day of April 1946 and ending on the 31st day of December 1947 is reasonably and properly attributable, wholly or partly, to any chargeable accounting period or standard period, such deduction as appears to the Excess Profits Tax Officer to be reasonable shall be allowed in computing the profits of such chargeable accounting period or standard period; and any relief accruing from such deduction shall be given by repayment or otherwise, as the case may require."

The following Bill* was introduced in the Legislative Assembly on the 20th March, 1947:—

L. A. BILL No. 37 OF 1947

A Bill to make better provision for financing measures for promoting the welfare of labour employed in the coal-mining industry.

WHEREAS it is expedient to make better provision for financing measures for promoting the welfare of labour employed in the coal-mining industry, including housing and the provision of dispensary services, and for such purposes to impose a cess and constitute a fund;

It is hereby enacted as follows :—

Short title, extent and commencement.

1. (*1*) This Act may be called the Coal Mines Labour Welfare Fund Act, 1947.

(*2*) It extends to the whole of British India.

(*3*) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

Interpretation.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "Advisory Committee" means the Advisory Committee constituted under section 8;

(*b*) "Commissioner" means the Coal Mines Labour Welfare Commissioner appointed under section 9, and includes any officer authorised in writing by the Commissioner to exercise any of his functions under this Act;

(*c*) "Housing Board" means the Coal Mines Labour Housing Board constituted under section 6;

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*The Governor-General has been pleased to give the previous sanction required by clause (*a*) of sub-section (2) of section 67 of the Government of India Act, as saved from repeal by paragraph 12 of the Government of India (Commencement and Transitory Provisions) Order, 1936, and by clause (*b*) of sub-section (1) of section 108 of the Government of India Act, 1935, to the introduction in the Legislative Assembly of this Bill.

(*d*) "Fund" means the Coal Mines Labour Housing and General Welfare Fund constituted under section 4;

(*e*) "prescribed" means prescribed by rules made under this Act.

Imposition and collection of duty.

3. (*1*) There shall be levied and collected as a cess for the purposes of this Act a duty of excise on all coal and coke despatched from collieries in British India, at such rate not less than four annas and not more than eight annas per ton, as may from time to time be fixed by the Central Government by notification in the official Gazette:

Provided that the Central Government may, by notification in the official Gazette, exempt from liability to the duty any specified class or classes of coal or coke.

(*2*) The duty levied under sub-section (*1*) shall, subject to and in accordance with rules made in this behalf, be collected by such agencies and in such manner as may be prescribed.

Coal Mines Labour Housing and General Welfare Fund.

4. (*1*) The proceeds of the duty levied under section 3 shall be paid by the collecting agencies into the Reserve Bank of India at Calcutta in the prescribed manner, and shall be credited to a fund to be called the Coal Mines Labour Housing and General Welfare Fund, and apportioned under two separate accounts, to be called the housing account of the Fund and the general welfare account of the Fund, in such manner as the Central Government from time to time may, by notification in the official Gazette, determine:

Provided that there shall at all times be credited—

(*a*) to the housing account of the Fund, not less than one anna and four pies, and

(*b*) to the general welfare account of the Fund, not more than four annas and eight pies,—

out of the duty collected under this Act on every ton of coal or coke.

(*2*) There shall also be credited to the housing account of the Fund—

(*a*) any grants made thereto by the Central Government;

(*b*) rents, if any, realised from housing accommodation constructed out of such account;

(*c*) any other moneys received by the Housing Board.

Expenditure from the Fund.

5. (*1*) The cost of administering the Fund and the salaries and allowances, if any, of the Commissioner, Inspectors, Welfare Officers and other staff appointed to supervise or carry out measures financed from the Fund shall be defrayed out of the Fund, and shall be apportioned between and debited to the housing account and the general welfare account in such manner as may be prescribed.

(*2*) The Central Government shall out of the general welfare account of the Fund pay annually grants-in-aid to such of the colliery owners as maintain to the satisfaction of the Commissioner dispensary services of the prescribed standard for the benefit of labour employed in their collieries, so however that the amount payable as grant-in-aid to the owner of a colliery shall not exceed—

(*i*) the amount of the duty at the rate of eight pies per ton recovered in respect of coal or coke despatched from the colliery less the proportionate cost of recovery, or

(*ii*) the amount spent by the owner of the colliery in the maintenance of the dispensary service, as determined by the Commissioner,

whichever is less :

Provided that no grant-in-aid shall be payable in respect of any dispensary service maintained by the owner of the colliery if the amount expended thereon, as determined by the Commissioner, is less than eighty rupees per mensem.

(*3*) The balance of the moneys in the general welfare account of the Fund shall be applied by the Central Government to meet expenditure incurred in connection with measures which are in the opinion of the Central Government necessary or expedient to promote the welfare of labour employed in the coal-mining industry.

(*4*) Without prejudice to the generality of sub-section () the moneys in the general welfare account of the Fund may be utilised to defray—

(*a*) the cost of measures for the benefit of labour employed in the coal-mining industry directed towards—

(*i*) the improvement of public health and sanitation, the prevention of disease, the provision of medical facilities and the improvement of existing medical facilities, including the provision and maintenance of dispensary services in collieries the owners of which do not receive grants-in-aid under sub-section (*2*),

(*ii*) the provision of water-supplies, and facilities for washing and the improvement of existing supplies and facilities,

(*iii*) the provision and improvement of educational facilities,

(*iv*) the improvement of standards of living, including nutrition, amelioration of social conditions, and the provision of recreational facilities,

(*v*) the provision of transport to and from work ;

(*b*) the grant to a Provincial Government, a local authority or the owner, agent or manager of a coal mine of money in aid of any scheme approved by the Central Government for any purpose for which moneys in the general welfare account of the Fund may be utilised ;

Provided that before any such grant is made to the owner, agent or manager of a coal mine, the Advisory Committee shall be consulted ;

(*c*) the allowances, if any, of the members of the Advisory Committee and the amounts debitable to the account under sub-section (*1*) ,

(*d*) any other expenditure which the Central Government directs to be defrayed out of the moneys in the general welfare account of the Fund.

(*5*) The Central Government shall publish annually in the official Gazette an estimate of receipts into and expenditure from the general welfare account of the Fund together with a statement of the accounts.

(6) The moneys in the housing account of the Fund shall be applied by the Housing Board to defray—

(a) the cost of erecting, maintaining and repairing housing accommodation for labour employed in the coal-mining industry and of providing services and facilities connected therewith;

(b) the cost of preparing schemes, and of acquiring any land required, for the purposes referred to in clause (a);

(c) the grant, subject to the previous approval of the Central Government, to a Provincial Government, a local authority or the owner, agent or manager of a coal mine of money in aid of any scheme approved by the Housing Board for the purposes referred to in clauses (a) and (b);

(d) the allowances, if any, of members of the Housing Board and the amounts debitable to the account under sub-section (1);

(e) any other expenditure which the Central Government directs to be defrayed out of the moneys in the housing account of the Fund.

(7) In February of each year the Housing Board shall submit to the Central Government a statement in the prescribed form of the estimated receipts into and expenditure from the housing account of the Fund for the ensuing financial year, and may at any time during that year submit to the Central Government a supplementary statement.

(8) The Housing Board shall comply with such directions as the Central Government may from time to time think fit to give in respect of expenditure from the housing account of the Fund.

(9) The Housing Board may invest moneys in the housing account of the Fund in securities of the Government of India or, with the previous approval of the Central Government, in other securities.

(10) The Housing Board shall cause to be maintained such books of account as may be prescribed and shall prepare in the prescribed manner an annual statement of the accounts.

(11) The Housing Board shall cause the housing account of the Fund to be audited annually by a person qualified under the provisions of section 144 of the Indian Companies Act, 1913, to act as an auditor of companies, and as soon as the said account has been audited the Housing Board shall forward a copy thereof together with a copy of the report of the auditor thereon to the Central Government.

VII of 1913.

(12) The Central Government shall have power to decide whether any particular expenditure is or is not debitable to the housing account, or the general welfare account, of the Fund, and its decision shall be final.

Coal Mines Labour Housing Board.

6. (1) The Central Government shall, by notification in the official Gazette, constitute a Coal Mines Labour Housing Board to prepare and carry out, subject to the previous approval of the Central Government, schemes, financed from the housing account of the Fund for the provision of suitable housing accommodation for labour employed in the coal-mining industry, and to carry out the other functions of the Housing Board under this Act.

(2) The Commissioner shall be the chairman of the Housing Board, and the other members thereof shall be appointed by the Central Government and shall be of such number and chosen in such manner as may be prescribed.

(3) The Housing Board shall be a body corporate by the name of the Coal Mines Labour Housing Board, having perpetual succession and a common seal, with power to acquire property both movable and immovable, and shall by the said name sue and be sued.

(4) No act done by the Housing Board shall be called in question on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Housing Board.

Provisions regarding housing accommodation.

7. (1) The occupation by any person of any housing accommodation provided out of the housing account of the Fund shall be subject to compliance by that person at all times with such conditions relating to his employment and to his occupation of such accommodation as may be prescribed.

(2) Before any person occupies any such accommodation he shall be furnished with a copy of the conditions referred to in sub-section (1), and if he so desires the said conditions shall be read over to him in a language which he understands; and the Housing Board shall cause to be published in such manner as it thinks best adapted for informing the persons concerned any changes which may from time to time be made in the said conditions.

(3) If, in the opinion of the Housing Board, any person in occupation of any such accommodation fails or ceases to comply with any of the conditions referred to in sub-section (1), it may, by notice in writing, require him to vacate the accommodation on or before such date, not being less than fifteen days after the service of the notice, as may be specified in the notice; and the occupation of such accommodation by such person or any dependent of his after the date so specified shall be unlawful, and such person or dependent may be evicted accordingly by due process of law from such accommodation.

(4) There shall be payable in respect of the occupation of any such accommodation as aforesaid rent at such rate as may be prescribed:

Provided that the Housing Board may remit, subject to compliance at all times with the conditions referred to in sub-section (1), either the whole or any part of the prescribed rent:

Provided further that where, in the case of any person who is by virtue of a remission under the first proviso paying either no rent or a reduced rent, the Housing Board has reason to believe that such person has contravened any of the said conditions, it may by notice in writing require such person to pay, with effect on and after the expiry of seven days from the service of the notice, rent for the accommodation occupied by him at the full prescribed rate.

(5) All rent payble in respect of the occupation of such accommodation as aforesaid, whether at the full prescribed rate or at a lesser rate, shall be recoverable as an arrear of land revenue.

Advisory Committee.

8. (1) The Central Government shall, by notification in the official Gazette, constitute an Advisory Committee, to advise on matters on which the Central Government is required by this Act to consult the Committee and on any other matters arising out of the administration of this Act which the Central Government may refer to it for advice.

(2) The members of the Advisory Committee shall be appointed by the Central Government and shall be of such number and chosen in such manner as may be prescribed :

Provided that the Advisory Committee shall include an equal number of members representing the owners of coal mines and workmen employed in the coal-mining industry, and that at least one member of the Advisory Committee shall be a woman.

(3) The chairman of the Advisory Committee shall be an officer of the Central Government appointed by the Central Government.

Appointment and powers of officers.

9. (1) The Central Government may appoint a Coal Mines labour Welfare Commissioner and such number of Inspectors, Welfare Officers and other staff as it thinks fit to supervise and carry out measures financed from the Fund.

(2) Any person so appointed shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. XLV of 1860.

(3) The Commissioner or any Inspector or Welfare Officer may, with such assistance, if any, as he thinks fit, enter at all reasonable times any place which he considers it necessary to enter for the purpose of supervising or carrying out the measures financed from the Fund, and may do therein anything necessary for the proper discharge of his duties.

Power to make rules.

10. (1) The Central Government may, by notification in the official Gazette, make rules to carry into effect the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, rules made under this section may provide for—

(i) the manner in which the duty levied under sub-section (1) of section 3 shall be collected, the persons who shall be liable to make the payments, the making of refunds, remissions and recoveries, the deduction by collecting agencies of a percentage of the realizations to cover the cost of collection, and the procedure to be followed in remitting the proceeds to the Reserve Bank of India ;

(ii) the composition of the Housing Board, the manner in which its members shall be chosen, the term of office of its members, the allowances if any payable to them and the manner in which the Housing Board shall conduct its business, including the number of members necessary to form a quorum at a meeting thereof ;

(iii) the books of account to be maintained by the Housing Board, and the form of its financial estimates and statements of account ;

(iv) the composition of the Advisory Committee, the manner in which its members shall be chosen, the term of office of its members, the allowances if any payable to them and the manner in which the Advisory Committee shall conduct its business ;

(v) the apportionment between the housing account and the general welfare account of the Fund of

the expenditure on the administration of the Fund and on the salaries and allowances of the Commissioner, Inspectors, Welfare Officers and other staff employed for the purposes of this Act;

(*vi*) the standard of dispensary service to be provided by owners of collieries for the purposes of sub-section (*2*) of section 5, and the inspection and supervision of the dispensaries and other places at which such services are provided;

(*vii*) the application by owners of collieries for grants-in-aid, the authority to whom and the manner in which such applications shall be made and the particulars to be specified in such applications;

(*viii*) the manner in which dispensary services may be provided by the Central Government;

(*ix*) the conditions governing the grant of money from the general welfare account of the Fund to a Provincial Government, a local authority or the owner, agent or manager of a coal mine;

(*x*) the rate of rent for housing accommodation provided out of the housing account of the Fund;

(*xi*) the conditions of service and the duties of Inspectors, Welfare Officers and other officers appointed to supervise or carry out measures financed from the Fund;

(*xii*) the duties and functions of the Commissioner;

(*xiii*) the furnishing by owners, agents or managers of coal mines of statistical or other information, and the punishment by fine not exceeding two hundred rupees of failure to comply with the requirements of any rules made under this clause;

(*xiv*) any other matter which under this Act is to be or may be prescribed.

Repeal of Ord. VII of 1944.

11. (*1*) The Coal Mines Labour Welfare Fund Ordinance, 1944, is hereby repealed.

(*2*) For the avoidance of doubts it is hereby declared that the provisions of section 6 of the General Clauses Act, 1897, shall apply to the repeal effected by this section. **X of 1897.**

(*3*) Any balance remaining in the Fund constituted under the aforesaid Ordinance shall be credited to the Fund constituted under this Act, and shall be apportioned between the housing account and the general welfare account of such Fund in such manner as the Central Government may determine.

STATEMENT OF OBJECTS AND REASONS.

The Coal Mines Labour Welfare Fund Ordinance promulgated in 1944 provides for the levy of an excise duty at a rate not exceeding Re. -/4/- per ton of coal and coke despatched from collieries in British India. The proceeds making up the Fund are earmarked exclusively for promoting the welfare of labour employed in the coal-mining industry. The Government of India are now satisfied that for reasons explained below, the limit of this Cess should be further increased, the maximum being raised to Re. -/8/- per ton on all despatches of coal and coke.

2. The present housing conditions in the coalfields are extremely unsatisfactory. No other scheme of welfare can be given higher 'priority'. Government do not consider that the housing problem can be tackled piecemeal. In their opinion a target figure of 50,000 houses for miners should be the aim of the housing scheme in the coalfields and that provision should be made for 15,000 houses to be completed before the end of the next financial year.

3. Careful calculations have been made in the light of prevalent costs and it is reckoned that by levy of a Cess at Re. -/3/4 per ton of coal and coke and a subsidy of Rs. 400 per house from the general revenues, adequate funds will be forthcoming for financing a comprehensive housing scheme of 50,000 houses. There are various other welfare measures like establishment of hospitals, anti-malarial measures, public health and sanitation, adult education propaganda, anti-tuberculosis, etc., which will absorb, when all the schemes are in final form, practically the whole of the present limit of Cess of Re. -/4/- per ton. Therefore, an increase in this limit is urgently required to provide funds for the housing scheme. The Bill provides that when the rate of Cess reaches the maximum of Re. -/8/- per ton not less than Re. -/3/4 thereof will be earmarked to a separate housing fund.

3. Colliery owners have in many cases provided dispensary services for the benefit of the miners employed by them and the employers' responsibility in this direction is well recognised. But with the establishment of Central and Regional Hospitals by the Coal Mines Welfare Fund a tendency is likely to arise by which the responsibility for providing dispensary services will be shifted on to the Fund in the absence of any statutory provision requiring the employer to provide such facilities. A provision has, therefore, been made in the Bill by which employers who provide dispensary services up to standards prescribed will be given the grants-in-aid not exceeding the amount equivalent to a Cess of 8 pies per ton in respect of coal or coke despatches from the respective colliery or the amount actually spent by the employer whichever is less. Where employers have not provided adequate dispensary services, the Fund will itself provide them and to meet this expenditure as well as the costs of grants-in-aid to the employers, a further levy of a cess equivalent to 8 pies per ton is necessary. This is estimated to yield approximately Rs. 9 lakhs a year which should ensure reasonably efficient dispensary services, it being noted that the existing Cess will provide funds in addition for the larger hospital schemes.

4. The result of these measures is that the limit of the Cess should be raised to Re. -/8/- per ton. It is not, however, intended to levy this maximum rate forthwith, and during the year 1947-48, it is not proposed to levy a total Cess in excess of Re. -/6/- per ton. Thereafter, with the further progress in the housing scheme, rates will have to be increased gradually and up to the maximum of Re. -/8/-

5. The cost of construction is expected to average Rs. 2,500 per house for which the economic rent may be as high as about Rs. 14/- a month. Miners have, by tradition, occupied quarters, where provided, rent-free and it is not, at present, intended to levy a rent or at any rate more than a nominal rent from the occupants. Some provision is, therefore, necessary in order to ensure that the houses constructed by the Fund are occupied only by genuine and steady workers and that those who cease to be so, do not continue to occupy the houses rent-free or on nominal rent. The details regarding these will be discussed with representatives of employers and workers who will be associated with the administration of the Housing Fund. But as a precautionary measure a legal provision has been included for summary recovery of rent at full rates in addition to the liability under the ordinary law, for eviction.

NEW DELHI; JAGJIVAN RAM.

The 11th March, 1947.

M. N. KAUL,
Secy. to the Govt. of India.